

(1996) 11 PAT CK 0051

In the Patna High Court

Case No : Letters Patent Appeal No. 301 of 1996

The Union of India (UOI) and Others

APPELLANT

Vs

Sunil kumar Dwivedi

RESPONDENT

Date of Decision : 15-11-1996

Acts Referred:

Citation : (1997) 1 PLJR 769

Hon'ble Judges : S.N. Jha, J;G.S. Chaube, J

Bench : Division Bench

Advocate : Shri Nath Pathak, for the Appellant; Sadanand Jha, Arbind Kumar Singh "Saroj" and Shanti Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—This Letters Patent Appeal is directed against the judgment of a learned Single Judge of this Court in CWJC No. 7285 of 1990. By the impugned judgment the learned Single Judge has allowed the writ petition of Respondent-Sunil Kumar Dwivedi and directed the Commandant, Central Industrial Security Force (CISF, in short), Vishakhapatnam to accept his joining on the post of Constable pursuant to the order of provisional appointment dated 20.3.90. The relevant facts are as follows:

2. On 19.3.90 pursuant to advertisement inviting applications from eligible candidates for recruitment of Constables issued by the Commandant, CISF, Vishakhapatnam, test for selection of suitable candidates was held at district police parade ground, Dharwad in the State of Karnataka. A select list was prepared and the selected candidates were issued provisional appointment letters on 20.3.90, asking them to report to the Assistant Commandant, CISF Unit, ISRO, Bangalore on 25.5.90. The Respondent who was placed at Sl. No. 15 in the said list was also issued provisional appointment letter. His appointment, however, was subject to being found fit after "a re-check of measurement". On 26.3.90 the select list was sent to the DIG, CISF, Madras for approval. The DIG did not approve the list the same had not been prepared keeping in view the

reservation roster. It was found that out of 30 available vacancies only 18 of them were available for the general category candidates. On 9.4.90 the list was accordingly returned. Thereafter the Commandant, CISF prepared a revised list as per the reservation roster on 28/30.4.90. The Respondent did not find place in the said list. On 30.4.90 he was informed that his appointment be treated as cancelled. The brother of the Respondent filed representation to the DIG on 25.5.90. The Respondent was asked to appear before the Selection Board, Mertarra in the district of Coorg (Karnataka) on 20.8.90. The Respondent did not appear before the Selection Board on the ground that he had received the communication very late. On 25.10.90 he was again asked to appear before Anr. Selection Board at Tumkur (Karnataka) on 19.11.90. The Respondent instead of availing of the chance of fresh selection, filed the writ petition in this Court on 15.11.90 seeking direction to the Commandant to accept his joining on the post in question pursuant to the letter of appointment dated 20.3.90 itself and for quashing the order dated 30.4.90 cancelling the said appointment. There is no dispute about the facts stated hereinabove.

3. Before the learned Single Judge on behalf of the Appellants, the plea of lack of territorial jurisdiction was taken on the ground that the selection process having been held in the State of Karnataka and the orders having also been issued from there, no part of cause of action has arisen within territorial jurisdiction of this Court. Therefore, the writ petition was not maintainable in this Court. The learned Single Judge rejected the plea. On merit, the learned Single Judge found that candidates placed below the Respondent in the general category itself having been allowed to join, the action of the authorities was arbitrary and violative of the Constitution. The order dated 30.4.90 cancelling the appointment was accordingly set aside and direction was issued to the Commandant to accept the Respondent's joining.

4. Following the decision of the Constitution Bench in *Shankarsan Dash Vs. Union of India*, it is now settled that mere empanelment in the merit list does not confer any indefeasible right upon the selected candidates for appointment. More so, when the selection itself is provisional. It does not however mean, as the Constitution Bench has observed in the said decision that "the State has the licence of acting in an arbitrary manner". It is not in dispute that the candidates placed below the Respondent in the select list have finally been appointed-The point for consideration therefore is whether the Respondent stands at par with those candidates (placed at Sl. Nos. 16 and 17) or his case is different from theirs.

5. In the counter affidavit a specific plea has been taken that candidates placed at Sl. Nos. 10, 12 and 15 (i.e. Respondents herein) did not possess the requisite physical standards and their selection was subject to relaxation by the competent authority, i.e. DIG, CISF. As regards the Respondent it has been stated that his normal chest measurement is short by 2 cms, and therefore, he was not otherwise eligible for appointment. Their selection was made subject to their

ineligibility being relaxed by the competent authority. The authority, however, returned the list with a direction to recast the same as per instructions contained in CISF Hrs. letter dated 19.6.89 and re-submit the same after rectifying the defect. It has been stated that in the revised select list names of all the three candidates, i.e. those placed at Sl. Nos. 10, 12 and 15 were omitted as they did not fulfil the required physical standard.

6. The fact that the normal chest measurement of the Respondent is 79 cms. as against the required minimum of 81 cms. is not disputed by the Respondent. The submissions of his counsel, Dr. Sadanand Jha in this regard is that the DIG ought to have passed definite order one way or the other either relaxing or refusing to relax the ineligibility. He submitted that the select list was returned by the DIG with a direction to recast the list in accordance with reservation roster. As 18 vacancies were admittedly available in the general category, the Respondent being placed at Sl. No. 15, there was no occasion for the Commandant to exclude his name in the revised list.

7. The letter of appointment issued to the Respondent on 20.3.90 runs as follows:

You have been provisionally selected for the post of Constable in CISF. You are directed to report to the Assistant Commandant at CISF Unit, ISRO Bangalore (Karnataka) on 25.5.90 at 08.00 hrs. if you are willing to accept this offer of appointment.

You are also informed that if you are found fit after a recheck of measurement at concentration centre only then you will be finally selected and sent for training to Training Centre.

The point for consideration is whether the Respondent can claim any right on the basis of the said offer. There cannot be any doubt, in view of the admitted position that the Petitioner did not possess the required physical standard, that he had no right for being considered for appointment to the post. A person not possessing the required physical standard may be appointed subject to the deficiency being condoned by the competent authority but I do not think a person can claim any legal right that the deficiency touching upon his very eligibility should be condoned by the authority. So far as the offer as contained in letter dated 20.3.90 is concerned, it is obvious that Respondent was selected subject to recheck of measurement. On the basis of the said letter therefore, he could not claim any indefeasible right. There is no dispute that the selection was subject to the approval by the DIG which was never granted. As indicated above, the Respondent could have a case only if he could establish that he stands at par with the candidates placed at Sl. Nos. 16 and 17. But as seen above, those candidates did not suffer from any such deficiency as regards physical standard or any other ineligibility and, therefore, the Respondent cannot bracket himself with them. Since as further seen above, the other two candidates placed at Sl. Nos. 10 and 12 who suffered from similar deficiency, have also been excluded from the revised select list and the candidature of only such candidates

maintained who did not suffer from any deficiency or any other kind of ineligibility, the action of the authority cannot be said to be arbitrary. In this view of the matter, the submission of the counsel, that the DIG had remitted the list to the Commandant to reframe it as per reservation roster and the Commandant was not justified in excluding the names of the Respondent (and Ors.) cannot be accepted. Even if it be assumed in favour of the Respondent that the return of the panel was for limited purpose, as stated above, Respondent cannot claim any legal right either for giving effect to the provisional appointment dated 20.3.90 or relaxing the deficiency regarding the physical standard. The Commandant having excluded the Respondent and two Ors. in the revised list the question which is to be considered is not the nature and scope of the "remand" order but the validity of the action of the Commandant. In view of the admitted facts of the case, the action of the Commandant cannot be said to be illegal or arbitrary.

8. Dr. Sadanand Jha in course of hearing highlighted that the Appellant did not come out with clear case in the counter affidavit, that the stand taken in the counter affidavit was at variance with the ground stated in the impugned order and that the statements made therein (counter affidavit) had not been properly affirmed in accordance with law. In view of the fact that foundational facts of the case are not in dispute, the submission of the counsel has little relevance. When basic facts are not in dispute and a person is not entitled to relief on facts, the Court should refrain from taking a legalistic view of the matter.

9. In fairness to the counsel for the Appellant I may refer to the judgment of the Supreme Court cited by him, in the case of Nandkumar Narayan Rao Ghormare v. State of Maharastra JT 1995(8) SC 159. In that case the Appellant was refused appointment to the post of Agricultural Officer on the ground of colour-blindness. The Supreme Court found that out of 35 posts, only 5 posts of Agricultural Officer required perfect vision without colour-blindness. For other posts colour-blindness was not an impediment. In the circumstances the Court directed the Government to consider the case of the Appellant for appointment to any post other than the five specified posts. In that case before the Supreme Court the post in question thus, fell in two categories; for appointment to one category of posts the candidates were required to possess perfect vision, for the other category colourblindness was not a disability. It was in those circumstances that the Supreme Court directed consideration of the case of the Appellant before it for the latter category of posts. The decision has no application in the present case. For appointment to posts of Constable, admittedly, the normal chest requirement is 79 (sic) cms. This is applicable to all such posts and there are no categories.

10. In the above premises, the judgment of the learned Single Judge does; not appear to be correct.

11. On the question of lack of territorial jurisdiction counsel for the Appellants placed reliance on Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, . Counsel for the Respondent, on the other hand, referred to AIR 1949

78 (Privy Council) ; Md. Zahoor Ahmad Rahim v. Union of India (1987) 3 ATC 114. In view of my finding on merit of the case, it is not necessary to go into this question. I would nevertheless observe that in the facts of the case I am inclined to accept the plea of the Appellant. The advertisement having been issued in the State of Karnataka, the selection tests having been held there, letters of appointment as well as cancellation having also been issued from there, no part of cause of action appears to have arisen in the State of Bihar, that is, within the territorial jurisdiction of this Court, and, therefore, the writ petition was not maintainable before the learned Single Judge. Since in my opinion the Appellants are entitled to succeed on facts, i.e. on merit, as indicated above, I do not wish to say more than this on this issue in that present case.

12. In the result, the judgment and order of the learned Single Judge are set aside. The writ petition, CWJC No. 7285 of 1990 filed by the Respondent is dismissed. The appeal, accordingly, is allowed. There will be no order as to cost.

G.S. Chaube, J.

13. I agree.